

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

CHIEF HEARING OFFICER DIRECTIVE

DOCKET NO. 2020-275-S ORDER NO. 2020-138-H

DECEMBER 18, 2020

CHIEF HEARING OFFICER: David Butler

DOCKET DESCRIPTION:

Application of Condor Environmental, Incorporated Requesting an Expansion of Its Existing Sewer Service Area to Include Certain Portions of Anderson County and Saluda County and Approval of Agreement (Request for Expedited Review)

MATTER UNDER CONSIDERATION:

Petition to Intervene of American Land Holdings, LLC, Palmetto Pointe Development Company, LLC and Palmetto Pointe Community Association, Inc.

CHIEF HEARING OFFICER'S ACTION:

This matter comes before the Chief Hearing Officer on the Petition to Intervene of American Land Holdings, LLC ("ALH"), Palmetto Pointe Development Company, LLC ("PPDC"), and Palmetto Pointe Community Association, Inc. ("PPCA") (together, "the Petitioners").

The Petition is timely filed, and no objections to the intervention have been filed.

After it has been determined that the Petition has been timely filed, the next question for the Commission is to determine whether or not the petitioning parties have clear factual support or grounds for the proposed intervention. S.C. Regs. 103-825A(3) requires that parties making a Petition to Intervene in a matter pending before the SC Public Service Commission must:

set forth clearly and concisely:

- (a) The facts from which the nature of the petitioner's alleged right or interest can be determined;**
- (b) The grounds of the proposed intervention;**
- (c) The position of the petitioner in the proceeding.**

Objections to a Petition to Intervene shall be filed with the Commission within ten days of service of the Petition to Intervene. S.C. Code Ann. Regs. 103-825A(3) (2012) (emphasis added).

The position of the Petitioners in the proceeding must also be concisely and clearly stated; provided it is known. The Commission has historically allowed a petitioning party to intervene even if the party has not made a determination of its position in a

docket/proceeding provided such intervention would not unduly cause a delay in the proceedings or prejudice the rights of other parties.

ALH is a Virginia limited liability corporation authorized to conduct business in South Carolina. PPDC is a South Carolina limited liability corporation formed and wholly owned by ALH for the purpose of developing Palmetto Pointe. PPCA is a South Carolina non-profit corporation formed by ALH for various purposes associated with the ongoing operations of Palmetto Pointe.

ALH, PPDC and PPCA seek to intervene in this proceeding to support the application of Condor Environmental Incorporated (“Condor”) and to oppose the petition of the Saluda County Water and Sewer Authority (“SCWSA”). The Petitioners believe that prompt approval of the Condor application is critical to the continued success of Palmetto Pointe and any delay caused by the issues raised by SCWSA will threaten the development by preventing the timely provision of wastewater collection and treatment services.

The Petitioners note that Palmetto Pointe is a high-end 125-acre residential development on Lake Murray off Mount Willing Road in Saluda County. According to the Petition, PPDC began marketing Palmetto Pointe in the fall of 2019. As of the date of this filing 98 of the 99 lots in the development have been sold. Twelve homes are under construction with 3 nearing completion and expected to be occupied by early 2021. In addition, 2 homes have been completed and certificates of occupancy have been issued. The average sales price of lots in Palmetto Pointe was \$148,857. Homes built in Palmetto Pointe are expected to be valued in the range of \$300,000 to \$1,000,000. The Petition states that when the development is fully built out, it will represent a substantial increase in the assessed property values of Saluda County and will promote additional economic development and activity in a rural part of South Carolina that has experienced little development in recent years.

Additionally, the Petitioners assert that as part of the development of Palmetto Pointe, ALH approached SCWSA about obtaining water and sewer service for the project. On January 3, 2019 SCWSA offered a proposal for water and sewer service to Palmetto Pointe that would have required the payment of capacity fees for water service at a rate of \$1650 for each lot and sewer capacity fees at \$3500 for each lot. Because SCWSA did not have sewer collection and treatment facilities in place to serve Palmetto Pointe nor any plans to build such facilities, ALH requested a revised proposal that only included water service. On February 25, 2019 SCWSA provided a water-only proposal. ALH accepted the February 25, 2019 proposal and SCWSA is now the water provider for Palmetto Pointe.

The Petition further notes that, because of the unavailability of wastewater collection and treatment service from SCWSA, the Petition notes that PPDC made arrangements for the development of septic service for the lots in Palmetto Pointe. Substantial engineering work was done to determine what lots were appropriate for service by individual septic systems and which would be served by a “community or cluster collection and treatment system” as defined in Regulation 61-56, part 102.5 of the regulations of the South Carolina Department of Health and Environmental Control (“DHEC”). Based on the engineering work done for ALH and PPDC, Wastewater Construction Permit Number WW042393

(“the Permit”) was sought and received by ALH on April 23, 2020 from DHEC’s Bureau of Water. The Permit approved the construction of a system (“the System”) to serve 45 lots that included individual septic tanks for each lot, pump tanks, 7,340 feet of PVC force mains and 3 separate common drain fields with a total of 14,500 feet of disposal lines.

The Petitioners also assert that under Regulation 61-56 part 300.1, DHEC will not issue a construction permit for an onsite wastewater system where a wastewater treatment system is accessible for connection. The Petitioners state that the issuance of the Permit reflects the determination by DHEC that SCWSA does not have facilities in place to serve Palmetto Pointe. The Petitioners assert that if SCWSA did have such facilities in place, DHEC would have refused to issue the Permit and would have required interconnection to the SCWSA system.

Further explaining their interest in this matter, the Petitioners note that because SCWSA did not have the capability to serve Palmetto Pointe, PPDC was required to spend substantial sums on engineering, construction and permitting activities to support the provision of wastewater treatment services to Palmetto Pointe. A partial list of these estimated expenses for PPDC or individual lot owners includes: approximately \$175,000 for soils testing, engineering and design; \$231,527 for construction of the common elements of the System; approximately \$450,000 for lot owner construction costs for lots served by the System; approximately \$432,000 for septic costs for the lots served by individual septic systems. The unavailability of a wastewater connection also required that approximately 10 acres of the development be set aside for drain fields. The loss of that portion of the property for the development of lots is estimated to have deprived PPDC of the potential of approximately \$1,000,000 in additional lots sales. In addition, PPDC abandoned approximately 15 acres due to poor soils and lack of land required to provide wastewater treatment service to these lots. The loss of that portion of the property for the development of lots is estimated to have deprived PPDC of the potential of approximately \$1,500,000 in additional lot sales, according to the Petition. In addition to the costs and loss of potential revenues caused by the need to develop septic service for Palmetto Pointe, DHEC required that Petitioners enter into a Financial Assurances and Emergency Response Agreement to imposing operating requirements for the System and establishing the amount to be escrowed as financial assurance (“Financial Assurance Escrow”) for the proper operation of the System. That agreement, entered in March 2020, and amended twice since, will require Petitioners to pay to DHEC \$231,527 to be held by DHEC for as long as Petitioners operate the System permitted by the Permit.

Under DHEC regulations, a Financial Assurances Escrow is not required if the System is owned and operated by a utility regulated by this Commission. For this reason and to provide competent and professional services to their customers, Petitioners negotiated a contract with Condor by which Condor would take ownership and responsibility for the Palmetto Pointe System. That contract has been submitted as an exhibit by Condor to its application for approval of its provision of wastewater treatment services to Palmetto Pointe. The Petitioners assert that the fact that DHEC does not require a substantial Financial Assurances Escrow if the System is owned and operated by a regulated utility reflects the policy preference for ownership and operation of such facilities by regulated

companies in the business of providing such services. By a filing made in this docket dated November 23, 2020, DHEC has endorsed the “technical, managerial and financial capacity [of Condor] to operate a viable wastewater system” and vouched for Condor’s “history of environmental compliance.” See Docket Entry 295711. Based on their interactions with DHEC, Petitioners are informed and believe that DHEC will approve a transfer of the Permit to Condor once the System is transferred and this Commission approves Condor’s request to serve Palmetto Pointe. Under those circumstances, the operating permit for the System will be issued to Condor.

The System to serve Palmetto Pointe is currently under construction and is expected to be completed by January 1, 2021. The Petitioners further assert that it is critical to the continued successful development of Palmetto Pointe that wastewater treatment service be available by February 1, 2021 when houses are expected to be completed that will be connected to the System. In order for the System to be operational by that date Petitioners request that Condor’s application be granted on an expedited basis as sought by Condor.

From these facts, this Hearing Officer holds that the Petitioners have successfully satisfied the three criteria for intervention stated in the Regulation. The Petitioner’s interest in this matter can clearly be discerned, as can the grounds for the intervention. Further, the position of the Petitioners is clearly stated.

In addition, the Petition to Intervene was timely filed and there are no objections to the intervention. Accordingly, the Petition to Intervene of American Land Holdings, LLC, Palmetto Pointe Development Company, LLC, and Palmetto Pointe Community Association, Inc. is hereby granted in this Docket. This ends the Chief Hearing Officer’s Directive.